

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
EASTERN DIVISION**

**STEPHANIE SHARP**

**PLAINTIFF**

**VS.**

**CASE NO. 2:07CV00090 JMM**

**ROBERT WILSON, ET AL.**

**DEFENDANT**

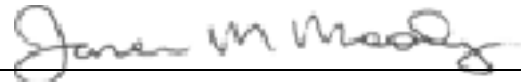
**ORDER**

The federal removal statute, 28 U.S.C. § 1441, provides that a diversity action is removable if the requirements for diversity jurisdiction are met and “if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b). Violation of the forum defendant rule is a jurisdictional defect and cannot be waived. *See Horton v. Conklin*, 431 F.3d 602 (8<sup>th</sup> Cir. 2005). In this case the Court understands that Ellis and Wilson are, and were at the time the complaint and the notice of removal were filed, citizens of Arkansas.

The Court also notes that defendant Ellis' motion to remove was apparently defective from the outset due to his failure to timely join all defendants in the removal and because it was in violation of the one-year statute of limitations set forth in 28 U.S.C. § 1446(b). *See Horton v. Conklin*, 431 F.3d at 604 (“Under the rule of unanimity, ordinarily all defendants must join in a notice of removal or the case will be remanded.”) (citing *Marano Enters. of Kansas v. Z-Teca Rests., L.P.*, 254 F.3d 753, 755 n.2 (8<sup>th</sup> Cir. 2001)); *Bancservices Group, Inc. v. Stockgrowers State Bank*, 2008 WL 922306 (E.D. Mo. 2008) (no equitable exception to one-year limit set out in § 1446).

The parties are given up to, and including, Tuesday, April 22, 2008, to show cause why the above styled case should not be remanded back to the Circuit Court of Crittenden County, Arkansas, based upon a violation of 28 U.S.C. § 1441(b). The deadlines set out in the Scheduling Order of August 30, 2007 for pretrial disclosure sheets and evidentiary depositions are extended an additional seven days. All other deadlines remain the same.

IT IS SO ORDERED THIS 18 day of April, 2008.

A handwritten signature in dark ink, appearing to read "James M. Moody", is written over a horizontal line.

James M. Moody  
United States District Judge